

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Alaska Communications	)	WC Docket No. 10-90
	)	
Petition for Clarification or	)	
Limited Waiver of the Geocoded	)	
Location Identification Requirements	)	
of the Connect America Fund Phase I	)	

**PETITION FOR CLARIFICATION OR, IN THE ALTERNATIVE,  
PETITION FOR LIMITED WAIVER  
OF THE REQUIREMENT TO IDENTIFY BY LATITUDE AND LONGITUDE  
THE LOCATIONS IN WHICH  
ALASKA COMMUNICATIONS DEPLOYED BROADBAND  
TO MEET THE REQUIREMENTS OF CAF PHASE I**

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## **EXECUTIVE SUMMARY**

Alaska Communications accepted CAF Phase I incremental support at a time when the Commission's rules were still being developed. After broadband deployment had already begun using first round support, the Commission announced a new requirement that carriers provide "geocodes" (latitude and longitude coordinates to the sixth decimal place) for each location to which they deployed broadband using CAF Phase I incremental support, including both Round 1 and Round 2 support. It is not clear this requirement ever became codified as an FCC rule.

Alaska Communications does not have geocodes for remote locations where it used the Phase I incremental support, nor was this requirement in effect when Round 1 deployment began. Rather than asking Alaska Communications to send a field technician to each location solely for the purpose of gathering geocodes, the FCC should clarify that the company may supply this information on a rolling basis, over the next two construction seasons, as it visits these areas for maintenance and other ordinary business purposes. Alternatively, the FCC should temporarily waive the rule for the same two-season period, until October 2018.

Failure to grant this relief would result in undue hardship to Alaska Communications because of the extreme conditions in which it operates and the remote locations involved in this request. Moreover, hardship would result to customers who would see less investment in broadband because the company would be required to divert approximately \$73,000 of limited CAF funds to this record-keeping task.

Granting the requested relief would ensure that support is used as efficiently as possible, while still serving the Commission's goal to identify with specificity all

locations where support has been deployed to enable broadband capability. No party would be adversely affected by grant of the requested relief, which is temporary and limited to just 2,379 locations, all of which are remote and very costly to reach. In the interest of efficiency, Alaska Communications respectfully requests expedited action on this petition.

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On behalf of its four local exchange carrier (“LEC”) subsidiaries, Alaska Communications Services Group, Inc. (“Alaska Communications”) hereby requests that the Commission temporarily grant relief from the obligation to provide geocodes for a subset of the locations to which broadband was deployed using Connect America Fund (“CAF”) Phase I incremental support. Alaska Communications first seeks clarification that the requirement from which relief is sought herein currently is not an effective FCC rule, at least not with respect to the CAF Phase I, Round 1 incremental locations. Because USAC seeks to enforce this requirement as to CAF Phase I, Round 1, this clarification is urgently needed. In the alternative, and to the extent that this requirement is a rule in effect for CAF Phase I, Round 2 locations, Alaska Communications requests a limited waiver. The scope of this request is limited in time, in geographic scope, and

in the total customer locations affected, as explained below. In the absence of relief, strict implementation of the rule would impose a unique burden on Alaska Communications and its customers, costing roughly \$73,000 in unnecessary expense, without any appreciable public interest benefit. By contrast, the purposes of the geocode requirement readily can be accomplished while avoiding such burdens through grant of this petition. Alaska Communications estimates that it will be able to provide all remaining geocodes by October 2018.

## **I. BACKGROUND**

Alaska Communications comprises four price cap LECs all operating in the state of Alaska: ACS of Alaska (Juneau and Sitka study areas), ACS of Anchorage (Anchorage and surrounding communities), ACS of Fairbanks (Fairbanks and surrounding communities), and ACS of the Northland (Greatland and Glacier State study areas). All but the Anchorage study area are rural.<sup>1</sup>

Pursuant to the *USF-ICC Transformation Order*, subsequent actions in this docket, and Section 54.312 of the Commission's rules, Alaska Communications' price cap LEC subsidiaries were eligible for the CAF Phase I incremental support mechanism. This mechanism was adopted to stimulate immediate broadband deployment to areas served by price cap carriers.<sup>2</sup> Support was distributed in two tranches, the first in 2012, and the second in 2013. Alaska Communications accepted a total of \$1,949,325 in

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<sup>1</sup> Five of the six Alaska Communications study areas are rural. See 47 U.S.C. §153(44); 47 C.F.R. §51.5.

<sup>2</sup> *Connect America Fund, Universal Service-Intercarrier Compensation Transformation Order*, 26 FCC Rcd 17663, ¶¶133, 145 (2011); *Connect America Fund, Report & Order*, 28 FCC Rcd 7766, 7771 (2013).

Phase I incremental support to deploy qualifying broadband to 2,291 locations<sup>3</sup> at \$775 each (Round 1), and 316 locations at \$550 each (Round 2). With these funds and substantial incremental investment on the company's part, Alaska Communications was able to complete buildout to the required number of locations in less than three years, meeting the requirements of the Commission's rules.<sup>4</sup>

Price cap carriers that accepted incremental Phase I support were required to identify the locations where they proposed to deploy supported broadband by wire center and census block.<sup>5</sup> Upon completion of construction within three years of accepting support, carriers were required to certify that they had deployed to the required number of locations broadband meeting the FCC's minimum performance requirements.<sup>6</sup> The Commission required that this information "specify the *number* of locations in a *census block-wire center combination* to which they have actually built"

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<sup>3</sup> Initial acceptance of support for 5,401 locations inadvertently included at least 2,100 locations already served by WISPs, as well as certain other locations that could not economically be served; after denying a petition for waiver, the Commission ordered that ACS refund a substantial portion of CAF Phase I, Round 1 support. *Alaska Communications Systems Petition for Waiver of Section 54.312(b)(2) and (3) of the Commission's Rules; Connect America Fund*, WC Docket Nos. 10-90, 05-337, Order, 31 FCC Rcd 7105 (2016).

<sup>4</sup> Originally, build-out was required to be completed within three years of the date on which the carrier notified the FCC of its acceptance of incremental support. 47 C.F.R. §§54.312(b)(3), 54.312(c)(9), 54.313(b)(1)(ii). *Wireline Competition Bureau Announces Deadline for Connect America Phase I, Round 2*, Public Notice, WC Docket No. 10-90, DA 14-1392 (Wireline Competition Bur., rel. Sept. 25, 2014).

<sup>5</sup> 47 C.F.R. §§54.312(b)(3), §54.312(c)(4), 54.313(b)(1)(ii), 54.313(b)(2)(ii).

<sup>6</sup> 54.313(b)(2) ("In its next annual report due after three years after filing a notice of acceptance of funding pursuant to § 54.312(b) and (c), [the carrier will file] a certification that the company has deployed to all required locations and that it is offering broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage allowances, if any, associated with a specified price for a service offering that are reasonably comparable to comparable offerings in urban areas").

and “identify identify the precise *number* of locations so that appropriate adjustments, if any, can be made to support previously provided, if a carrier fails to meet its deployment obligation.”<sup>7</sup> Finally, the Commission required that carriers “be prepared” to identify “upon request” the specific locations to which they deployed using CAF Phase I incremental support in sufficient detail that the Commission or USAC could verify the availability of qualifying broadband at those locations.<sup>8</sup> Nothing was said at the time support was distributed about providing longitude and latitude coordinates for all locations covered by CAF Phase I incremental support.

For Round 2 incremental support, the Commission introduced a new requirement that, following completion of construction of the required number of locations, carriers file a list of the locations where the support was used by “geocode” (latitude and longitude coordinates to six decimal places).<sup>9</sup> Although it is not clear whether the requirement of geo-location-specific coordinates for incremental support ever was codified in an effective FCC rule,<sup>10</sup> and the requirement was introduced for Round 2, not for Round 1, USAC nevertheless has informed Alaska Communications that it expects a

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<sup>7</sup> *Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, Order, 27 FCC Rcd 8141, ¶6 (2012) (emphasis added).

<sup>8</sup> *Id.* (“To facilitate the ability of USAC and the Commission to validate that carriers have, in fact, met their deployment obligations, carriers must be prepared, upon request, to provide sufficient information regarding the location of actual deployment to confirm the availability of service at that location”).

<sup>9</sup> *Connect America Fund*, Report and Order, 28 FCC Rcd 7766, 7780 (2013) (carriers receiving CAF Phase I, Round 2 incremental support “must provide geocoded latitude and longitude location information”).

<sup>10</sup> The original rule, *requiring only a list of census blocks*, as of this writing still appears to be in effect. 47 C.F.R. §54.313(b)(2)(ii) (“in its annual reports due after one, two, and three years after filing a notice of acceptance of [CAF Phase I, Round 2] funding pursuant to §54.312(c), [the carrier shall file] a statement of the total amount of capital funding expended in the previous year in meeting Connect America Phase I deployment obligations, *accompanied by a list of census blocks* indicating where funding was spent”) (emphasis added).



geocoded location list for both Round 1 and Round 2 locations. This geocode requirement is the subject of the present petition.

Each price cap carrier accepting incremental CAF Phase I support was required to certify that it satisfied its Phase I obligations in its next annual report due after the 3-year deployment deadline.<sup>11</sup> Alaska Communications completed its CAF Phase I Round 1 and Round 2 incremental support build-out in a timely manner, *and identified the census blocks and wire centers* where Round 1 and Round 2 support was used to deploy broadband meeting or exceeding the Commission's minimum standards, as required by the rules.<sup>12</sup> However, it now appears that the company is expected to go further and provide geocodes for each individual location, including off-road locations, where incremental CAF Phase I support was used. USAC has inquired of the company why it has not provided geocodes for all Round 1 locations identified in the July 1, 2016 report. Alaska Communications began collecting geocodes for CAF Phase I locations following adoption of the requirement in 2013, but has been unable to furnish precise geocodes for every location where it deployed broadband using CAF Phase I, Round 1 and Round 2 incremental support. The company estimates that 2,379 locations, which are remote and very costly to reach, remain to be identified by geocode – 316 Round 2 locations, and 2,063 Round 1 locations.

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<sup>11</sup> 47 C.F.R. §§54.312(b)(3), 54.312(c)(9), 54.313(b)(1)(ii), 54.313(b)(2)(ii). For Round 1, the required certification as to completion of construction was due July 1, 2016. For Round 2, the required certification is due July 3, 2017.

<sup>12</sup> For CAF Phase I, Round 2 funding the Wireline Competition Bureau upon conclusion of the challenge process extended the build-out completion deadline to January 10, 2017. *Wireline Competition Bureau Reminds Connect America Phase I Round 2 Support Recipients of Deployment and Certification Deadlines*, Public Notice, DA 16-1415 (Wireline Competition Bur. Dec. 19, 2016).

## **II. CLARIFICATION OR WAIVER OF THE GEOCODE REQUIREMENT IS MERITED**

The Commission may waive a rule for good cause shown.<sup>13</sup> More specifically, the Commission may exercise its discretion to waive a rule where, due to special circumstances, deviation from the general rule would better serve the public interest than strict adherence to the general rule.<sup>14</sup> The Commission may take into account consideration of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>15</sup>

As demonstrated herein, the relief requested is necessary both to prevent undue hardship to Alaska Communications and its customers, and to make more efficient use of the limited CAF support amounts than would be possible if the company were forced to visit each individual Round 2 location to gather geocodes in the next few months. Moreover, some of those locations may not be accessible for months. Strict compliance with the geocode requirement is impossible as to the Round 1 locations to the extent that the Commission finds that the requirement was actually in effect and they should have been provided in the July 2016 report. For all of these reasons, grant of a waiver in this case would better serve the public interest than strict adherence to the rule. Moreover, it is not clear that the rules require geocodes. Alaska Communications therefore requests, first, that the Commission clarify whether this requirement is a rule. To the extent necessary, a waiver of such rule is respectfully requested, is justified for good cause, and will serve the public interest.

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<sup>13</sup> 47 C.F.R. § 1.3.

<sup>14</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>15</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

A. It Is Unclear Whether the Geocode Requirement Is a Commission Rule

The basis for this petition is that Alaska Communications did not know it would be required to collect geocodes for CAF Phase I locations until the deployment process was substantially complete. Even for Round 2 locations, it is not clear that the geocode requirement adopted in 2013 ever became a Commission rule. For the affected locations, the company has furnished census blocks, wire centers, and the centroid geocodes for the relevant locations, but does not yet have more specific geocode information. However, because it did not collect geocodes at the time of deployment, providing them now would require making a special trip to each CAF Phase I incremental support location with a hand-held device used to plot the coordinates. If the rules do not strictly require this, the Commission should clarify this immediately.

Alaska Communications continues to work diligently to obtain this information as technicians are in the field in the ordinary course of maintaining and upgrading the network, but the company does not believe that it will be able to furnish all of the missing geocodes before the end of one and possibly two construction seasons.<sup>16</sup> Alaska Communications seeks a Commission ruling that, by identifying the geocodes of the specific locations in the ordinary course of business, over the next two construction cycles, and providing them to USAC on a rolling basis, the company will not be in violation of any FCC rule or the terms of the company's CAF Phase I incremental support.

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<sup>16</sup> Declaration of Stan Masneri, attached, ¶5.

B. Enforcement of the Geocode Requirement At This Time Would Result In Extreme Hardship To Alaska Communications and Its Subscribers

The Commission is familiar with the hardships associated with delivering advanced telecommunications capabilities to rural Alaska. In the *USF-ICC Transformation Order*, and in subsequent orders crafting rules for CAF Phase II, the Commission recognized that under the conditions unique to Alaska broadband deployment and operation can prove both more expensive and more time-consuming than in other parts of the nation.<sup>17</sup> For example, Alaska Communications was permitted a longer build-out period than other price cap carriers electing CAF Phase II support.<sup>18</sup>

In the case of CAF Phase I incremental support, price cap carriers were encouraged to invest in broadband in unserved areas using a combination of federal high-cost support and their own resources, but were required to do so on a very short schedule, in anticipation that the rules for CAF Phase II would be completed by the end of the three-year Phase I build-out period. The Commission developed the rules for CAF Phase II even while it was still implementing Phase I, and developed the rules for Phase I, Round 2 even before Round 1 was fully implemented. Thus, Alaska Communications already was deploying broadband to Phase I incremental locations when the Commission decided to adopt a geocode requirement. Consequently, through no fault of the company's, the technicians did not know of the geocode requirement

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<sup>17</sup> *Connect America Fund*, Order, 31 FCC Rcd 12086 (2016) (“*Alaska Communications CAF II Order*”) (adopting specific CAF Phase II rules for Alaska Communications, including location flexibility, based on the unique conditions in Alaska); *Connect America Fund, et al.*, 26 FCC Rcd 17663, 17737 (2011) (the “*Transformation Order*”) (acknowledging that serving non-contiguous areas of the nation such as Alaska involves unique challenges and conditions).

<sup>18</sup> *Alaska Communications CAF II Order*, 31 FCC Rcd at 12092-93 (permitting a ten-year construction term in light of Alaska's short construction season and other local factors).

while they were in the field commencing the installation process (in very remote locations in many cases).

Alaska Communications therefore proposes that it be allowed an extended time to provide geocodes for 2,379 of the locations where it deployed broadband using CAF Phase I incremental support. The reasons for the missing geocodes are, first, because the CAF Phase I build-out was already in progress and partially completed before geocodes were required for recipients of incremental support, so the locations were not geocoded at the time of deployment; and second, because these locations are remote, making access costly and hazardous most of the year.<sup>19</sup> Some of these locations have no street address and are difficult to locate in the best of conditions.<sup>20</sup> All are difficult and costly to reach much of the year, subject to temperature, ice, snow and unpredictable storms.<sup>21</sup> Indeed, 524 of the locations are not accessible via road at all but require that technicians reach them via a charter flight or by snow-machine or boat<sup>22</sup> The remaining 1,855 locations, though on the road system, still are in remote areas accessible only when weather conditions permit.<sup>23</sup> The company believes the cost to complete the geocoding will be upwards of \$73,000 if a special effort must be made to undertake this data-gathering outside of normal network maintenance trips to these locations.<sup>24</sup>

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<sup>19</sup> Declaration of Stan Masneri, ¶4.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* ¶¶4-5. This approximation is based on assumptions about the number of locations that can be reached in a single field visit, and the number of days a technician can be deployed.

Moreover, many of the remote locations where CAF Phase I support was used by Alaska Communications are in isolated communities typically accessible only by small plane, boat, or snow-machine. Some do not appear on any state or borough parcel map. In each case, the geographic coordinates are not yet known to Alaska Communications, only a customer address. (Some do not even have a street address, or the address may be approximate, as road systems are quite limited.)<sup>25</sup> Winter storms, high winds and heavy precipitation can prevent visits to these remote locations for weeks on end. Alaska Communications does not dispatch field technicians in such conditions except where critical infrastructure is in jeopardy.<sup>26</sup> The company would not knowingly put its employees in harm's way to perform routine maintenance or merely to gather data.

In order to gather the missing geocodes, Alaska Communications would be compelled to send its technicians back to each individual location, at a cost of at least \$73,000.<sup>27</sup> Because these locations are remote, many cannot be reached except by plane, and weather is a factor limiting access to these locations.<sup>28</sup> Even the “on road” locations are remote, and roads may be impassible during Alaska's long winter. Even if the expense were not a limiting factor, strict compliance with the geocode requirement in some cases is an impossibility.

Moreover, the cost *is* a factor for Alaska Communications. As a relatively small company deploying broadband in rural and remote Alaska, the company already has put

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<sup>25</sup> Declaration of Stan Masneri ¶4.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* ¶5.

<sup>28</sup> For example, technicians often are unable to perform scheduled work in Delta Junction, Kodiak island, or Nenana, where CAF Phase I incremental support was used, due to weather conditions that preclude flying in. Once there, technicians often are delayed in exiting, which further adds to the cost of the visit. *See id.* ¶4.

substantial capital at risk. While improving the services available to the affected communities is a significant potential benefit from this investment, it is critical to Alaska Communications that every dollar of its own as well as every dollar of CAF support be used efficiently. Only in this manner do these investments make financial sense. Thus, it would be a crushing burden to demand that Alaska Communications deploy field technicians purely to log geocodes for locations where broadband was deployed between 2012 and 2016. Strict enforcement of the geocode requirement in this case effectively would punish Alaska Communications – and its customers – for the company’s timely and substantial investment in broadband. Every dollar required to be spent merely gathering geocode information is a dollar that cannot be spent on additional expansion of services to Alaska customers.

The relief requested is simple: Allow Alaska Communications to fill in the missing geocodes in the ordinary course of business, as the company has a technical or business reason to visit each location. These data will be provided to USAC on a rolling basis as soon as the information is gathered by the company. Alaska Communications anticipates getting to the majority of these locations in the coming construction season; however, due to the uncertainties of weather in Alaska, the company respectfully requests that it be allowed two construction seasons to complete this task (until October 2018).<sup>29</sup> In granting the waiver as requested, the Commission would be ameliorating the unduly burdensome effect of the geocode requirement, while still achieving its purpose.

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<sup>29</sup> *Id.* ¶5.

C. Temporary Suspension Of the Requirement In Alaska Would Make More Efficient Use of Limited CAF Dollars and Better Serve the Public Interest Than Strict Enforcement<sup>30</sup>

One of the Commission's primary purposes in transforming legacy universal service high-cost support programs was to target finite support amounts to high-cost locations that have been unserved or underserved under legacy programs. Granting relief in this case will enable support to be used for maximum broadband deployment, and avoid wasting funds merely for record-keeping that can be done more efficiently in the extended time-frame outlined above. Allowing Alaska Communications to provide the missing geocodes as technicians are called into the field for other reasons will improve efficiency without sacrificing any meaningful public benefit of having that information at hand. Indeed, the locations where Alaska Communications has deployed broadband but does not have a geocode are, by their very nature, extremely remote and thus highly unlikely to be served by any other provider.

Moreover, grant of the requested relief is consistent with the Commission's findings regarding Alaska, described above, as well as the unavailability of geocoded information to many service providers. Specifically, the Commission has recognized that smaller carriers may lack geocode information for the locations they serve. Indeed, in the context of CAF for rate-of-return companies, the Commission granted an extension of time *until March 1, 2019* for LECs electing model-based support to collect

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<sup>30</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).



geocodes for their existing broadband-capable locations.<sup>31</sup> Clearly, the Commission did not believe that this minor delay would harm the public interest in any way.

Thus, this is a case where strict enforcement of a Commission requirement (if indeed it is a Commission requirement) will not serve the Commission's purpose any better than granting the requested relief – and the relief will avoid undue hardship to Alaska consumers and their service provider. This limited waiver will affect only 2,379 CAF-funded locations, all of which are in remote areas of Alaska, and will not exceed two construction seasons (with information being provided on a rolling basis as soon as it becomes available in the ordinary course of business). Alaska Communications will complete as much of this task as possible this summer, but because weather is unpredictable, respectfully requests this extension until October 31, 2018 in case any locations remain unreachable this year.

In failing to capture the exact geocode for each location where it deployed broadband, Alaska Communications did not adversely affect universal service, the customer, or any competitor, nor deviate in any way from service of the Commission's broadband goals. Indeed, service was deployed expeditiously. Customers have benefitted from access to broadband. Few, if any, of these locations are likely to have a

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<sup>31</sup> *Connect America Fund*, Report and Order, Order, Order on Reconsideration, and Further NPRM, 31 FCC Rcd 3087, ¶213 (“While we encourage carriers to submit geocoded location information for their existing broadband locations no later than the deadline for the 2017 reporting, we recognize the possibility that some smaller companies may not already have complete lists of geocoded locations for their existing broadband infrastructure that was deployed under the legacy rules. Accordingly, while carriers electing the A-CAM model support are strongly urged to report new construction on a rolling basis starting in 2017, we will provide an additional year for them to file geocodes for pre-existing broadband-capable locations, with such information required to be submitted to USAC no later than March 1, 2019”) (2016) (emphasis added).

competitive presence any time soon. No additional support is requested in this petition. Indeed, Alaska Communications hopes to make CAF support go farther by not diverting broadband funds to the simple task of data-gathering. CAF reporting requirements should not detract from the broadband benefits of the CAF program.

C. Expedited Action Is Merited

Alaska Communications was unable to identify by geocode 2,063 of its 2,291 CAF Phase I, Round 1 incremental support locations as of July 1, 2016 or in the interim. The company will continue to work toward identifying this information, but cannot predict how quickly it will complete the task. USAC already is engaged in auditing price cap LEC performance under this program and has questioned the missing geocodes discussed herein. Further, Alaska Communications has been unable to identify by geocode all 316 of its CAF Phase I, Round 2 incremental support locations to date, and is not certain it will complete the task by July 1, 2017. The final report of CAF Phase I locations is due July 3, 2017. Therefore, FCC action on this petition is urgently needed. Alaska Communications intends to continue gathering the missing geocodes in the ordinary course of serving the affected locations, but seeks clarification or waiver from the Commission so that there will be no finding of liability based on the unavailability of data while Alaska Communications completes this process in an orderly manner. It makes no sense for USAC to pursue sanctions against Alaska Communications when the company is employing all due diligence to complete this task as efficiently as possible. Expedited action on this petition therefore is requested.

### **III. CONCLUSION**

Good cause exists to grant this petition for clarification or limited waiver. Alaska Communications and its customers would be unduly burdened by strict enforcement of the geocode requirement as to CAF Phase I incremental support locations, whereas grant of the requested waiver would permit more efficient use of limited high-cost support amounts without prejudicing any party in any way or detracting from the broadband benefits of the Commission's CAF program. With the limited relief requested herein, the Commission's goals and policies will be fulfilled in due course.

Respectfully submitted,



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